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6 **UNITED STATES DISTRICT COURT**  
7 **WESTERN DISTRICT OF WASHINGTON**  
8 **AT SEATTLE**

9 JAMES MCDONALD,

10 Plaintiff,

11 v.

12 ONEWEST BANK, FSB, NORTHWEST  
13 TRUSTEE SERVICES, INC., MORTGAGE  
14 ELECTRONIC REGISTRATION SYSTEMS,  
15 INC., INDYMAC BANK FSB, DOES 1-50,

16 Defendants.

No. C10-1952 RSL

**DECLARATION OF CHARLES  
BOYLE IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

17 I, Charles Boyle, hereby declare:

18 1. I am Vice President of OneWest Bank, FSB ("OneWest"), Defendant herein.

19 This Declaration is made in support of Defendants' Motion for Summary Judgment  
20 ("Defendants' Motion"). In the regular performance of my job functions, I am familiar with  
21 business records maintained by OneWest Bank for the purpose of servicing mortgage loans.  
22 These records (which include data compilations, electronically imaged documents, and  
23 others) are made at or near the time by, or from information provided by, persons with  
24 knowledge of the activity and transactions reflected in such records, and are kept in the  
25 course of business activity conducted regularly by OneWest Bank. It is the regular practice  
26 of OneWest Bank's mortgage servicing business to make these records. In connection with

DECLARATION OF CHARLES BOYLE  
IN SUPPORT OF DEFENDANTS' MOTION  
FOR SUMMARY JUDGMENT - PAGE 1 OF 4  
CASE NO. C10-1952 RSL

ROUTH  
CRABTREE  
OLSEN, P.S.

13555 SE 36th St., Ste 300  
Bellevue, WA 98006  
Telephone: 425.458.2121  
Facsimile: 425.458.2131

1 making this declaration, I have personally examined these business records. If called as a  
2 witness, I could testify competently thereto.

3 2. On or about January 8, 2007, Plaintiff James B. McDonald ("McDonald" or  
4 "Plaintiff"), in order to secure repayment of a promissory note (the "Note") in the amount of  
5 \$389,481.60, executed a Deed of Trust. True and correct copies of the Note and Deed of  
6 Trust are attached to Defendants' Motion as Exhibits 1 and 2, respectively.

7 3. After origination, Indymac Bank, FSB sold Plaintiff's Note to Federal Home  
8 Loan Mortgage Company ("Freddie Mac"). Indymac Bank, FSB retained the servicing rights  
9 and serviced the loan on behalf of Freddie Mac. Freddie Mac has remained the investor and  
10 owner of the Note.

11 4. IndyMac Bank FSB was closed by the Office of Thrift Supervision ("OTS")  
12 in July 2008, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as  
13 Receiver. A true and correct copy of the OTS Order No. 2008-24 (July 11, 2008) is attached  
14 to Defendants' Motion as Exhibit 3.<sup>1</sup>

15 5. Thereafter, IndyMac Federal Bank ("IMFB") was created and the FDIC was  
16 appointed Conservator. A true and correct copy of excerpts from the Purchase and  
17 Assumption Agreement is attached to Defendants' Motion as Exhibit 4.<sup>2</sup>

18 6. On March 19, 2009, the FDIC was appointed as Receiver for IMFB and sold  
19 most of the assets including the rights to service the loan presently at issue to OneWest Bank,  
20 FSB. True and correct copies of excerpts from the Master Purchase Agreement,<sup>3</sup> Loan Sale  
21  
22  
23

24 <sup>1</sup> The Office of Thrift Supervision Order No. 2008-24, dated July 11, 2008, can be found, in entirety, online at  
<http://www.ots.treas.gov/files/680018.pdf>.

25 <sup>2</sup> The Purchase and Assumption Agreement, in entirety, can be found online at  
[http://www.fdic.gov/bank/individual/failed/IndyMac\\_P\\_and\\_A.pdf](http://www.fdic.gov/bank/individual/failed/IndyMac_P_and_A.pdf).

26 <sup>3</sup> The Master Purchase Agreement, in entirety, is available online at  
<http://www.fdic.gov/about/freedom/IndyMacMasterPurchaseAgrmt.pdf>.

1 Agreement,<sup>4</sup> and Servicing Business Asset Purchase Agreement<sup>5</sup> are attached to Defendants'  
2 Motion as Exhibits 5, 6 and 7, respectively.

3 7. OneWest Bank is the current servicer for Freddie Mac; IndyMac Mortgage  
4 Services is a division of OneWest Bank. As part of the servicing agreement between  
5 OneWest and Freddie Mac, OneWest has possession of the Note through a document  
6 custodian, Deutsche Bank National Trust Co. ("Custodian"). A true and correct copy of the  
7 Custodial Agreement between Freddie Mac, OneWest, and Deutsche Bank National Trust  
8 Co. is attached to Defendants' Motion as Exhibit 8.

9 8. As the servicer in possession (through its Custodian) of the Note, OneWest is  
10 entitled to collect payments, initiate foreclosure upon borrower's default, and review  
11 Plaintiff's loan for possible modification in accordance with investor guidelines.

12 9. OneWest has been in possession of the Note and therefore the holder since on  
13 or about March 19, 2009.

14 10. On or about October 1, 2009, Plaintiff defaulted by failing to make the  
15 payment due for October 1, 2009, and every payment thereafter due.

16 11. On or about January 12, 2010, as an agent of OneWest Bank, FSB, Northwest  
17 Trustee Services, Inc. mailed and posted a notice of default (the "Notice of Default") in  
18 response to Plaintiff's default.

19 12. On or about January 27, 2010, Mortgage Electronic Registration Systems  
20 executed an assignment of deed of trust (the "Assignment") whereby MERS assigned its interest  
21 under the Deed of Trust to OneWest Bank, FSB. The Assignment was recorded February 4,  
22 2010, under King County Auditor's File No. 20100204000502. A true and correct copy of the  
23 Assignment is attached to Defendants' Motion as Exhibit 10.

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25 <sup>4</sup> The Loan Sale Agreement, in entirety, is available online at  
<http://www.fdic.gov/about/freedom/IndyMacLoanSaleAgrmt.pdf>.

26 <sup>5</sup> The Servicing Business Asset Purchase Agreement, in entirety, is available online at  
<http://www.fdic.gov/bank/individual/failed/ServicingBusinessAssetPurchaseAgreement.pdf>.

13. Brian Burnett was an employee of OneWest. Brian Burnett also has authority granted by MERS to execute documents on behalf of MERS. A true and correct copy of the MERS Corporate Resolution granting Burnett signing authority is attached to Defendants' Motion as Exhibit 11.

14. On or about February 4, 2010, as beneficiary, OneWest recorded an appointment of successor trustee (the "Appointment") naming Northwest Trustee Services, Inc. the successor trustee. The Appointment was recorded under King County Auditor's File No. 20100204000503. A true and correct copy of the Appointment is attached to Defendants' Motion as Exhibit 12.

I declare under penalty of perjury and the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED this 23<sup>RD</sup> day of March, 2011.

**ONEWEST BANK, FSB**

Charles Boyle, Declarant